

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

JONES, ) **Case No. 3:19-cv-02087-B**  
)  
Plaintiff, ) Dallas, Texas  
) March 19, 2020  
v. ) 10:00 a.m.  
)  
REALPAGE, INC., ) MOTION TO COMPEL AND FOR  
) SANCTIONS (#103)  
Defendant. )  
\_\_\_\_\_)

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE IRMA CARRILLO RAMIREZ,  
UNITED STATES MAGISTRATE JUDGE.

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24 Proceedings recorded by electronic sound recording;  
25 transcript produced by transcription service.

1                   DALLAS, TEXAS - MARCH 19, 2020 - 10:01 A.M.

2                   THE COURT: Good morning. We are on the record in the  
3 matter of Diane Jones versus RealPage. This is Civil Action  
4 3:19-cv-2087-B. Before the Court this morning is -- I'm  
5 waiting for it to pull up on my computer -- the Motion to  
6 Compel and for Sanctions filed by the Plaintiff on February  
7 21st, 2020.

8                   Who do I have on the phone with me, please, starting with  
9 the Plaintiff's side?

10                  MR. SOUMILAS: Judge Ramirez, good morning. My name  
11 is John Soumilas of Francis, Mailman, Soumilas, P.C., for the  
12 Plaintiff, Diane D. Jones.

13                  THE COURT: All right.

14                  MS. LEE: Good morning, Your Honor. This is Donna  
15 Lee. I am with the law firm Loewinsohn Flegle Deary Simon,  
16 also for the Plaintiff.

17                  MR. ST. GEORGE: And good morning, Your Honor. This  
18 is Timothy St. George, counsel for RealPage, Inc., attending  
19 for the Defendant.

20                  THE COURT: All right. Was there anyone else for the  
21 Plaintiff other than Mr. Soumilas and Ms. Lee?

22                  MR. SOUMILAS: Not for us, Your Honor.

23                  THE COURT: Okay. And then, for the Defense? Do we  
24 only have Mr. St. George for the Defense?

25                  MR. ST. GEORGE: Yes, Your Honor.

1           THE COURT: All right. Because we're on the  
2 telephone, and to keep this orderly, and because sometimes  
3 there's a delay, I'm going to call on each side separately and  
4 ask questions, and then I'm going to ask that when you're  
5 finished with your answer if you let me know that that's all.  
6 And then I'll call on the other side. And that way we don't  
7 have anyone talking over anyone. The hearing is being  
8 recorded. I want to be sure we keep the record clear. And  
9 sometimes it's difficult to do that in a telephonic  
10 conference.

11           All right. I've had an opportunity to review the motion,  
12 the appendices, the briefs, as well as the response. So I  
13 have questions for both sides. Let's see. Mr. St. George, I  
14 have Interrogatory No. 5 in front of me. And while I will  
15 admit that I had to read it several times to make sure that I  
16 understand it, I'm unclear as to the misunderstanding here. I  
17 agree with you that it says "either," not "neither," but I  
18 can't see that that distinction makes a difference.

19           MR. ST. GEORGE: Would you like me to respond, Your  
20 Honor?

21           THE COURT: I would, please.

22           MR. ST. GEORGE: So, Your Honor, looking at the  
23 interrogatory, it's clearly disjunctive, so it says it's not a  
24 character-for-character match to either the name of the  
25 offender or any of the alias names listed on the criminal

1 record.

2 So when we look at that interrogatory, taking the plain-  
3 text interpretation of it, it's either the name of the  
4 offender, which is the offender that is listed on the criminal  
5 record, or any of the alias names, or not a character-for-  
6 character match. That is how we responded to the  
7 interrogatory. Because it was disjunctive and it used the  
8 word "any," that -- it signaled to us, based on its plain  
9 text, that it was looking for the name of the offender not  
10 matching or one or more of the alias names not matching.

11 Now, in order to modify the interrogatories to have been  
12 exclusive in the way that Plaintiff's counsel evidently  
13 intended to draft it, it would have had to say -- it would  
14 have had to say one of two things, essentially. It would have  
15 to have been neither -- a character-for-character match to  
16 neither the name of the offender nor any of the alias names,  
17 or it would have to say either the name of the offender or  
18 none of the alias names. If either one of those had -- those  
19 interrogatories had been propounded, then the answer would  
20 have been different. But that is how we read the  
21 interrogatory based on the plain text of how it was  
22 propounded. Disjunctive and the plain meaning of term "any,"  
23 meaning one or more, as supported by some of the authority  
24 that we cited to you in our memorandum.

25 THE COURT: All right. So you're saying that -- I'm

1     sorry, were you done?

2             MR. ST. GEORGE:   Yes, Your Honor.   I'm sorry.

3             THE COURT:   All right.   So you're saying you looked at  
4     it as it doesn't match either the name or it doesn't match any  
5     of the aliases.   So if it matched the name but none of the  
6     aliases, that was included?

7             MR. ST. GEORGE:   That would have been included, yes,  
8     among others.

9             THE COURT:   As I read Mr. -- I'm sorry.   Were you  
10    done?

11            MR. ST. GEORGE:   Yes, Your Honor.

12            THE COURT:   Okay.   As I read Mr. Sohal's deposition,  
13    there were -- there were records included for people for whom  
14    some of -- well, this says "any of the alias names."   It  
15    doesn't match -- if we take out -- let's -- because, to take  
16    your reading of it, let's just take out name of the offender  
17    and look at the second clause, if it truly is disjunctive and  
18    we're just looking at the second clause, if the subject of the  
19    report was not a character match to any of the alias names,  
20    that seems inconsistent with what Mr. Sohal said, that there  
21    were records for people for whom there was a match to one of  
22    the alias names.

23            MR. ST. GEORGE:   Right.   So the way that Mr. Sohal  
24    interpreted the interrogatory was to take the word "any" and  
25    to use its plain text to say, "one or more."   So if we had two

1 alias names, and one of the alias names did not match, then  
2 that was included within the universe of reports that we  
3 deemed to be responsive to the interrogatory. Just like  
4 asking, you know, if you were to say, have, you know, any of  
5 you, you know, collectively speaking to a group of people, you  
6 know, gone to New York City, you know, the plain meaning of  
7 the term "any" meaning one or more, that's how it was  
8 interpreted by Mr. Sohal and that's how it was responded. Or,  
9 and that's how it was disclosed in the deposition, you know,  
10 clearly, to have been responded to by RealPage.

11 I'm done speaking, Your Honor.

12 THE COURT: Okay. If there was any question as to  
13 what this interrogatory meant, why wasn't that addressed at  
14 the initial face-to-face conference?

15 MR. ST. GEORGE: It didn't come up, Your Honor. There  
16 was no -- frankly, we didn't think the interrogatory was  
17 unclear. But in terms of the meet-and-confer discussions on  
18 this specific issue, whether "any" was, within the context of  
19 the interrogatory, intended to mean "none," to be exclusive,  
20 that's just not something that was ever addressed during any  
21 of the meet-and-confers.

22 I will note that, you know, in our objections we did lodge  
23 an objection that we didn't believe that this interrogatory  
24 synced up with the class definition, but as -- and notified  
25 Plaintiff's counsel as such in our objections. But that

1 wasn't an objection that they ever asked to have us meet-and-  
2 confer on. Instead, it was simply -- the only meet-and-confer  
3 discussions that occurred surrounded the meaning of the term  
4 "name" and how that was being interpreted. There wasn't any  
5 discussion further about whether "any" was intended to mean  
6 "none" or whether or not they actually intended to say  
7 "neither/nor," is just not an issue that came up. And I was  
8 involved in all of those meet-and-confer discussions, Your  
9 Honor.

10 And I'm done speaking.

11 THE COURT: It's -- I'm trying to pull up the  
12 objection to look at the specificity of the vagueness  
13 objection. But if it is the Defendant's burden to produce and  
14 they're -- it contends that the question is vague, isn't it  
15 your burden to ask what exactly is being requested as part of  
16 the face-to-face?

17 MR. ST. GEORGE: Well, to be clear, we didn't believe,  
18 Your Honor, that the question was vague at all. I mean, this  
19 was not -- this is not even an issue that was discussed.

20 You know, the way that the -- the interrogatory could have  
21 been drafted in either way that I described. In our mind, it  
22 was actually asking for an exclusive list of alias exclusions,  
23 but we did not object to the interrogatory as being vague. We  
24 still do not object to the interrogatory as being vague as it  
25 was drafted.

1       We did object to the interrogatory as not tracking the  
2       class definition and objecting on relevance grounds for that  
3       basis. But pursuant to the compromise that we reached at the  
4       last oral argument in January, we agreed to respond to that  
5       interrogatory and 16 and 17 as part of the deal.

6       So, just to be clear, we don't regard this interrogatory  
7       as vague. We regard it -- we regard it as actually clear in  
8       terms of what was being asked, and the disjunctive nature of  
9       the request and the plain meaning of the term "any." So that  
10      was our position. And that's not why it came up. And during  
11      those meet-and-confer discussions, we discussed the relevance  
12      objection, but ultimately, as you know, during the oral  
13      argument, the parties reached a compromise on that. Not  
14      withdrawing that objection, but -- or not, you know, sort of  
15      mooting that objection for purposes of anything having to do  
16      with class certification, but for purposes of discovery, just  
17      withdrawing it and providing the response.

18      I'm done with my answer.

19           THE COURT: All right. Now, the email in your  
20      submission says that a new -- that you would agree to provide  
21      a new response. That was email of February 19th at Page 13 of  
22      your appendix, which is Document 117.

23           MR. ST. GEORGE: The February -- the February 19th  
24      email, Your Honor?

25           THE COURT: Yes.

1 MR. ST. GEORGE: Is that what you're referencing?

2 THE COURT: Yes.

3 MR. ST. GEORGE: Okay.

4 THE COURT: Yes.

5 MR. ST. GEORGE: Yes, Your Honor.

6 THE COURT: You offered to provide a new response.

7 Has a new response been provided?

8 MR. ST. GEORGE: It has not been provided as of yet.  
9 The analysis has been run. But because Plaintiff's counsel  
10 would not agree that that would be sufficient, it hasn't been  
11 provided. It can be provided, and frankly, we were -- I asked  
12 for a new interrogatory to be served, but we didn't get one.  
13 But in any event, we will -- and that's why I was trying  
14 during the discussion to reach agreement on the exact  
15 parameters, to eliminate any drafting issue in the future. So  
16 the interrogatory analysis has been run. It can be produced.  
17 It has not been produced to date because of this contested  
18 posture and the request that it be coupled with more data  
19 that's already been resolved by court order. But it certainly  
20 can be.

21 I'm done speaking, Your Honor.

22 THE COURT: All right. Thank you.

23 All right. Mr. Soumilas, if they offered -- if they  
24 provided what sounds like a rational explanation for the  
25 reading that they contend is the appropriate reading and

1 offered to redo it, you could have had the answer that you  
2 were seeking weeks ago. Why are we here?

3 MR. SOUMILAS: Your Honor, first of all, let me thank  
4 the Court for allowing us to have this hearing via telephone,  
5 given what is going on with the coronavirus pandemic. I'm in  
6 Philadelphia at home, so I appreciate that.

7 But to answer Your Honor's question about Interrogatory  
8 15, it's the first subject of dispute today, we did request  
9 that they give us the actual answer to that interrogatory, but  
10 they declined that. We're still waiting for it. We have not  
11 gotten it. But the reason why we are here today is because  
12 that answer is no longer sufficient, Your Honor, because the  
13 answer to Interrogatory 15, what we have here is a case of  
14 obstruction, not a case of confusion. And if I might, Your  
15 Honor, address those points that defense counsel made,  
16 starting with the plain reading of Interrogatory 15.

17 It's before the Court. It was served in October of 2019.  
18 And it asks for situations that do not match to either the  
19 name on a criminal record or any of the alias names. Now, the  
20 most important word in that interrogatory is "not." It is a  
21 very clear question, a question that has been answered in  
22 other similar litigation by other defendants like this company  
23 that does tenant screening. It is a very simple question that  
24 a six-year-old could answer. It is, you know, identify for me  
25 shapes that are not either a square or a triangle. If the

1 answer is circle or rhombus, that is correct. If the answer  
2 is square, that is plainly not correct. It is asking for  
3 situations that are not either A or B.

4 We think that question was clear from the get-go. The  
5 reason it was clear from the get-go is because it's not just  
6 an abstract question, Your Honor. It's a question targeted at  
7 identifying the name mismatch class pled in this case, which  
8 has always been pled in this case, about situations like the  
9 Plaintiff Jones, where Diane Jones does not match, does not  
10 match, to either Toni Taylor, the name on the criminal record,  
11 or to any of the alias names on that criminal record. So when  
12 you deal with the interrogatory, Your Honor, and the  
13 interrogatory is a hundred percent clear, one hundred percent  
14 clear, grammatically correct, precise, a hundred percent clear  
15 -- now, the very first objection to that interrogatory, Mr.  
16 St. George said, we find it ambiguous for purposes of  
17 answering, but we did not object to ambiguity. The very first  
18 objection is, RealPage objects to this Interrogatory 15 as  
19 vague and ambiguous on the whole.

20 That was as of November 23, 2019, a month after the  
21 interrogatory was served. That's before the Court at Docket  
22 110, Page 6 of that Joint Appendix that the parties provided,  
23 the very, very first objection. And in fact, we met and  
24 conferred about that issue over the phone, I was there, in  
25 writing, in emails, I was copied on them and participated in

1 some of them, via video link, in person, over multiple times  
2 in November and December of 2019 to make it crystal clear to  
3 this Defendant that we're looking for situations that do not  
4 match, not match, A or B.

5 Now, their answer to that interrogatory, which they served  
6 on November 23rd -- I'm sorry -- 22nd, 2019, changes the word  
7 of the question from "either" to "neither," with an N. That  
8 is also before this Court. It is, again, Docket 110, Page 6.  
9 We do not ask that question. We think the proper grammar on  
10 the question is that something does not match either A or B.  
11 That is the correct grammar. That is what we're looking for.  
12 That is the class definition. That's what this case is about.  
13 They changed it to does not match neither A or B.

14 Now, we don't think this is proper grammar. We do not  
15 think that that is a question. We do not think that it  
16 changes the meaning of the answer. We're still looking for  
17 conditions that do not match either or neither A or B.

18 So, in our view, Your Honor, the question was clear, and  
19 we conferred about it over the phone, in person, via video, in  
20 writing, and even up to the January 15th hearing before this  
21 Court. We made a joint statement. We quote from that  
22 statement in our papers to the Court, that we're looking for  
23 "reports of (inaudible) similar to the report sold and for  
24 Plaintiff, addition of the criminal record included. Now, the  
25 report does not pertain to the subject of the report."

1       We further say specifically -- the question is,  
2       "specifically targeted to identify consumers who are similarly  
3       situated to the named Plaintiff, Diane Jones, is not a  
4       character-for-character match to 'Toni Taylor' or any of the  
5       alias names listed."

6       There could be no question in our view, from the plain  
7       reading of the question, from the meet-and-confers, from the  
8       joint statement to the Court, from the class definition, any  
9       which way you could conceivably read this question, that we  
10      are not asking for situations where a criminal record for a  
11      Diane Jones is matched to an applicant Diane Jones. That is  
12      the exact opposite of what we're looking for. We're not  
13      looking for names that match character-for-character, yet  
14      that's exactly what we got in response to Interrogatory 15  
15      after this Court ordered the Defendant to provide a response.

16      Now, what we did at that hearing, Your Honor, is we said,  
17      so long as we get the proper response and a deposition of a  
18      person who knows how it's calculated, we will not need to look  
19      at the underlying documents. The reason we wanted the  
20      underlying documents, Your Honor, is because the original  
21      response to this very question, the original response was, The  
22      answer is zero. That is also in front of the Court at Docket  
23      110, Page 7 of the Joint Appendix. They said none. Nobody  
24      matches this profile. We said -- this is back in November,  
25      Your Honor -- we said, well, that's impossible. Our Plaintiff

1 matches the profile.

2 The next answer was, well, we cannot do it under our  
3 records. We said, okay, give us the records -- we asked for  
4 the records in Document Request No. 2 -- and we will do it.  
5 We hired an expert. We're prepared to do this ourselves if  
6 you're unwilling to do it.

7 Then they said, oh, actually, we can do it. We can do it,  
8 so we'll do it, but we're not going to give you the records.

9 We said, all right. So as long as we get a correct  
10 answer, you can do it.

11 Then they give us an answer, the answer goes from none to  
12 we can't do it. There's 64,178.

13 Now Mr. St. George says that there's a fourth answer to  
14 this question. It's going to be something else. We still  
15 don't have it. I asked for it in email correspondence. I've  
16 been waiting for it. I have not seen it. But Your Honor, I'm  
17 afraid that this answer is not going to be sufficient at this  
18 point.

19 I am trying to represent a class of consumers, and having  
20 Defendant for six months play games with answering a single  
21 question that says I want a scenario that is not either A or  
22 B, and what they've managed to give me is four different  
23 answers, and the last one is an answer that says, it could be,  
24 actually, either A or B.

25 Well, that's not what the question asks for. That's not

1 what we ever wanted.

2 There is no possibility, in our view, that there is  
3 confusion here. We've met and conferred so many times about  
4 this issue. And I don't think the question is confusing to  
5 begin with. It's precise. It's grammatical. I don't know  
6 why they altered the answer, but it doesn't change the  
7 reality, Your Honor, which is that we don't know what the  
8 answer is to this day. Discovery has closed. They identified  
9 a couple of new witnesses on the last day of discovery. We  
10 don't know what they're going to say. And at this point, Your  
11 Honor, we're here because we need the documents.

12 The documents are going to be able to give us the type of  
13 evidence that courts require, that when we have an answer,  
14 Interrogatory 15 is backed up, it's solid, it's credible, and  
15 we're certainly prepared, as we have in multiple other cases,  
16 including two that I could recall right now in the Northern  
17 District of Georgia and a second one in the Eastern District  
18 of Pennsylvania, assure the secure transmittal of records. Of  
19 course, we don't -- there's protective order in this case. It  
20 will be pursuant to that. And I think that's up to the  
21 parties to make sure that the transmittal of records, Your  
22 Honor, is secure and not lost. We have a similar interest in  
23 that regard.

24 We're here today, to answer your question, because the  
25 answer that they've given us has changed four or five times.

1 We do not have a legitimate answer. We do not believe that  
2 there's any confusion or a legitimate objection as to  
3 confusion, and there never was. What we have is obstruction.  
4 And now we want the documents so that we get the answer  
5 verified and make sure it's correct.

6 And we really think it should not take multiple motions to  
7 the Court to answer a rather simple question like this, when  
8 we know that they can do it. This is what this company does.  
9 It matches names to records. That's its very business model.  
10 Mr. St. George even admitted that they could do it and that  
11 they'd give us the answer. They still haven't.

12 So that's why we're here today, Your Honor, and I'm done  
13 speaking for now.

14 THE COURT: All right. I certainly understand your  
15 frustration at not having the documents that you requested --  
16 or the information that you requested several months ago. But  
17 I can't agree with you that the question is one hundred  
18 percent clear. Maybe you did not hear me tell Mr. St. George  
19 that I had to read it several times to be sure that I  
20 understood it. So, to me, it was not a hundred percent clear.  
21 And maybe that's a reflection on my intelligence, but  
22 certainly I did not understand it the first time I read it. I  
23 had to read it several times to try to understand the parties'  
24 dispute regarding the proper interpretation.

25 I am confused as to why this -- why we are here at this

1     juncture still trying to interpret it. But it appears to me  
2     that we are all on the same page now as to what you intended  
3     it to mean, which I think was reflected or paraphrased by the  
4     Defendant in the February 19th email, that it's neither and  
5     none. No match of the name and no match of any alias. Is  
6     that accurate, Mr. Soumilas? That's what you were intending  
7     to ask?

8             MR. SOUMILAS: So Your Honor, I think that email is  
9     accurate. I think that's what we've always intended to ask.  
10    And I do think that that is what we ask in the original  
11    Interrogatory 15. You could ask the question multiple times.  
12    We chose what we think is a simple, grammatically-correct way  
13    to ask it.

14            And I do want to emphasize, Your Honor, that if this was  
15    November and we were having this discussion, okay, let's have  
16    a discussion and make sure we're all on the same page. But  
17    Your Honor, I could assure you, we had this discussion in  
18    November and December and January and before the Court at the  
19    hearing and submitting the papers. Nobody by the January  
20    hearing thought that there was any confusion about this  
21    question. We just didn't get the straight answer.

22            So that's my answer, and I'm done speaking for now.

23            THE COURT: All right. So, back to my original  
24    question. You agree that the characterization in the February  
25    19, 2020 email that's at Page 13 of Appendix at Document 117

1 is the information that you are seeking?

2 MR. SOUMILAS: Let me just -- I know I wrote that  
3 email, and it was between me and Mr. St. George, Your Honor,  
4 but let me just make sure that I'm looking at the correct one.  
5 And I'm sorry, Your Honor, could you repeat the page number of  
6 that?

7 THE COURT: Page 13.

8 MR. SOUMILAS: So, yes, Your Honor, that's what -- it  
9 is Page 9 of the Appendix, Page 13 of 22 of the filing. That  
10 is correct.

11 THE COURT: All right. Mr. St. George, I understand  
12 that the analysis for the definition as you have characterized  
13 it on Page 13 of Document 117 has been done and you have that  
14 number to produce immediately.

15 MR. ST. GEORGE: I'm in the process of finally QC-ing  
16 it. I sent one email -- and I'm sorry, I should say quality  
17 control -- in terms of the response. I sent an email to the  
18 technical team this morning, I would expect a response on that  
19 within the next day, and then we should be able to produce the  
20 information next week. So that is almost immediately, but  
21 there may be, you know, the need for a day or two (inaudible),  
22 especially given that half of the client is currently working  
23 offsite and remote and essentially furloughed. They're on A  
24 and B teams at RealPage at the moment in terms of actually  
25 coming in and working with the databases.

1 But that is -- it is in its very final stages and ready  
2 for production, subject to final verification.

3 THE COURT: I would like for you to please respond to  
4 Mr. Soumilas' assertion that the parties have had numerous  
5 conversations about what this interrogatory means.

6 MR. ST. GEORGE: Sure. So, there was no discussion  
7 ever about this issue in terms of whether or not they intended  
8 to ask for an exclusive list. The meet-and-confer discussions  
9 that occurred and which is why we answered the question "none"  
10 originally was because there was confusion as to what was  
11 being asked due to capital term, Name. That is what the meet-  
12 and-confer discussions centered around.

13 We would have had no reason and no incentive and no  
14 possible, you know, strategic advantage to somehow acting  
15 contrary to meet-and-confer discussions in a court order. Mr.  
16 Soumilas knows me. It's not anything we ever would have done,  
17 especially when we offered up -- freely offered up the  
18 deponent, who then testified to exactly what we did. There  
19 wasn't going to be any hiding on this issue. We knew that  
20 this was going to be the subject of a deposition. And the  
21 issue was raised early and clearly.

22 I think you can see from the deposition testimony that we  
23 appended, even in the deposition itself, Mr. Soumilas was  
24 changing the language in the interrogatory to make it  
25 exclusive.

1 But I can personally represent as an officer of the Court  
2 who has supervised this process, there was never any intention  
3 to operate in a way that was contrary to the text of the  
4 interrogatory as we read it or any meet-and-confer discussions  
5 or this specific issue regarding whether or not they actually  
6 intended to ask for none of the aliases or for neither/nor.  
7 That was never raised. It wouldn't have served our client's  
8 interest. We would have never done it.

9 There is a simple solution to this, which we proposed  
10 immediately coming out of the deposition in response to his  
11 letter, which is, there seems to be confusion. We say it's on  
12 their end. They say it's on our end. But there seems to be  
13 confusion, so why don't we just agree to rerun the query in  
14 the way that he's now explained it in the deposition, using  
15 different language, and we will reproduce a verified response.  
16 We'll give you another deposition. And if you're asking for a  
17 stipulation of the class certification period, or discovery  
18 period, that's also something we would take to our client,  
19 especially because class certification briefing isn't due  
20 until May 29th of this year.

21 I don't know why we are here. There is absolutely no  
22 basis to contend that anyone ever operated in anything other  
23 than the utmost good faith here. We think that we have the  
24 correct textual read of the interrogatory.

25 And keep in mind, Your Honor, this broad interrogatory

1 that doesn't track the class definition was itself followed by  
2 two also specific interrogatories, which we responded to as  
3 part of the compromise and which there's no debate that we've  
4 fully and accurately responded to.

5 What we understood to be happening here was, on the plain  
6 text of the interrogatory, they wanted essentially a full  
7 universe of any report that could even possibly theoretically  
8 be involved in this class, and then drilling down on that in  
9 two subsequent interrogatories.

10 You have my representation there's no bad faith, as an  
11 officer of the Court. We've been involved in every meet-and-  
12 confer discussion. Mr. Soumilas cannot point you to a single  
13 piece of correspondence where this issue was ever raised in a  
14 meet-and-confer posture, because it never was.

15 And even in the joint statement, the statements are being  
16 made such as, "We want to explore in Interrogatory 15 people  
17 who are similar to the Plaintiff." And the Plaintiff is  
18 included in the response to No. 15 as we provided it and  
19 verified it and Mr. Sohal testified to that.

20 So, again, there's no clarity from Plaintiff's counsel on  
21 this point. An ambiguity that was discussed regarding the  
22 meaning of the term "Name," well, that was clarified and we  
23 agreed to provide the response. We did so.

24 The interrogatory could have been drafted and should have  
25 been drafted and argued in multiple ways that would have given

1 it precision to what the Plaintiff's counsel evidently  
2 intended. They never clarified anything.

3 The reason why the word "neither," by the way, appears in  
4 our response, it was a simple typographical error of the  
5 paralegal who was preparing the shell. There's no doubt as to  
6 what Plaintiff asked in the actual text of the interrogatory.

7 But it's very clear what happened here. What we don't  
8 understand ultimately is why we're back in front of the Court  
9 in terms of motion practice. There is a simple solution for  
10 this. We offered it. It was rejected. And there's no basis  
11 for -- there wasn't any basis for any motion to compel, both  
12 on the merits, because of mootness; certainly, no basis for a  
13 claim of sanctions.

14 So I hope that provides some clarity in terms of the  
15 actual meet-and-confer process. Again, I was involved in  
16 every one of those discussions.

17 And I'm done speaking now, Your Honor.

18 THE COURT: Tell me where in your brief you talk about  
19 what "any" means.

20 MR. ST. GEORGE: I'm sorry, Your Honor. So, if you  
21 look at Page 6 of our submission, motion in opposition, we say  
22 that -- this is I(a) Sub (1). So if either the offender --  
23 and towards the middle of the paragraph, the sentence says,  
24 "Thus, if either the offender name did not exactly match, or  
25 any, i.e., one or more, of the alias names did not exactly

1 match, that reporter was included -- that report, excuse me,  
2 was included in RealPage's numerical response. We cite *U.S.*  
3 *v. Gonzales*, citing *Webster's Third*.

4 The issue in *U.S. versus Gonzales* was the meaning of the  
5 term "any" in terms of any term of imprisonment. The  
6 Government wanted to limit that to simply federal terms of  
7 imprisonment. The issue is whether it also included state  
8 terms of imprisonment. There were two -- there were two terms  
9 of imprisonment on the table, and the Court said -- and the  
10 Supreme Court in that case said no, it can be either. It can  
11 be a federal or it can be a state. That's what the word "any"  
12 means.

13 But again, at the very least, again, we think we're  
14 correct under the text of the interrogatory as it was  
15 requested. And, you know, in your briefing, you see them  
16 shift to the word "neither." In the deposition testimony, you  
17 see him asking either/nor, you know, again modifying the text  
18 of the interrogatory as it was drafted.

19 So that is -- was just one of the cases and definitions of  
20 the word "any" that we cited.

21 There were multiple ways to make this interrogatory  
22 precise in terms of what they asked, and it wasn't precise.  
23 In fact, we think it was precise the other way. But at the  
24 very least, this issue itself was never the subject of  
25 discussion. It was other aspects of the interrogatory that

1 were part of the meet-and-confer in terms of ambiguity and why  
2 we provided the revised response.

3 THE COURT: All right. I'm sorry. Were you done?

4 MR. ST. GEORGE: I'm sorry. Yes. Yes, Your Honor,  
5 I'm done speaking.

6 THE COURT: You mentioned earlier that, in addition to  
7 providing the number that was requested in Interrogatory --  
8 that was intended to be requested in Interrogatory 15, without  
9 making a determination of whether it actually was or not, you  
10 were also willing to provide another deposition.

11 MR. ST. GEORGE: Yes.

12 THE COURT: All right.

13 MR. ST. GEORGE: And we've made that clear in our  
14 meet-and-confer correspondence, in terms of the fact that if  
15 they wanted to notice the deposition, we would -- that's  
16 something we could accommodate. We asked them if they wanted  
17 to ask for a stipulation of the discovery cutoff in order to  
18 accommodate that. Discovery cutoff for class certification, I  
19 should add. And we do not have agreement on that.

20 THE COURT: All right. Thank you.

21 All right. Mr. Soumilas, it is your motion. I am happy  
22 to hear anything that you would like for me to consider in  
23 making my ruling.

24 MR. SOUMILAS: Your Honor, thank you. Just, I want to  
25 add a couple of additional points that I have not had a chance

1 to make and which I think might be responsive to the last set  
2 of comments by Mr. St. George.

3 So, let me begin by saying that I have worked with Mr. St.  
4 George for years and I respect him a great deal. I'm not  
5 saying that, you know, he is being below-board or unethical in  
6 this -- at all in this situation. What we are saying is that  
7 this Defendant, his client, clearly wishes to not provide data  
8 that would comprise a class that would not at all look like a  
9 particularly, you know, appealing class in litigation purposes  
10 because it's people who have criminal records on their files  
11 and the criminal records have names that don't match their  
12 names.

13 And they have tried repeatedly not to give us that answer.  
14 The very first meet-and-confer, when the answer was zero, that  
15 is precisely what we talked about. How could it be zero, but  
16 when you look at the question, No. 15, Diane Jones meets that  
17 pattern? She's one of those people who does not -- her name  
18 does not, those people who are not matched, either the name  
19 Toni Taylor or any of the aliases.

20 And so I think that there was clarity about what we're  
21 looking for. The idea that they would give us data that  
22 includes exact name matches, which is what they did, what the  
23 Defendant did, and Mr. Sohal testified that that was his  
24 search, is completely harmful to us and it undermines  
25 completely our ability to argue that this Defendant has a

1 procedure that is unreasonable because it associates criminal  
2 records with completely different names to people who don't  
3 have criminal histories. When the names is exactly a  
4 character-for-character match, then -- then that's a  
5 reasonable procedure. And that's not a class definition.  
6 That's not what the question asked. There's no way that  
7 anyone could have interpreted that question in this case to  
8 think that what -- we're looking for situations of the  
9 opposite of Ms. Jones.

10 So I do take exception to the varying answers: zero,  
11 can't be done, 54,000, some other number. And at this point,  
12 Your Honor, we do need some level of corroboration. We can't  
13 just -- if it was November and we had the answer after the  
14 initial meet-and-confer, that would be one thing, but now it's  
15 six months later and I feel like the reason why we are taking  
16 up the Court's time again is because I do not have confidence  
17 that we're going to get the correct answer in this case. And  
18 I certainly don't want to get an answer that again, you know,  
19 misdirects us into situations where there is a character-for-  
20 character match between criminal records and tenant  
21 applicants. We were never looking for that. There's no  
22 possibility you could read that question to ask for that.

23 So the thing that I'd like to leave this Court with, Your  
24 Honor, is that we will certainly want a verified answer. We  
25 will certainly, you know, want a deposition to be able to know

1 that we have the right answer this time. But we have, you  
2 know, very deep suspicions that this Defendant justified over  
3 six months of not giving us the right answer, and we think  
4 that at least some sampling of documents, some spot-checking,  
5 if you will, Your Honor, to make sure that we're getting a  
6 straight answer is now appropriate.

7 This is not November anymore. We're in the middle of  
8 March. And I want to make sure that when we get our answer, I  
9 could, you know, go back to the Court in a motion for  
10 certification and say, you know, this is the right answer.  
11 This is a legitimate answer and it's not some, you know, made-  
12 up answer or some answer that answers the opposite of what  
13 we've been trying to get in this case.

14 So I would implore the Court to give us at least some  
15 level of documentation in response to Document Request 2 so  
16 that we could be assured and the Court could be assured that  
17 the answer to Interrogatory 15 is final and correct.

18 And that's what I wish to add to the record, Your Honor.  
19 Thank you.

20 THE COURT: All right. Thank you. Mr. St. George,  
21 did you have anything that you wanted to argue before the  
22 Court before I make my determination?

23 MR. ST. GEORGE: Just one small point. So, the  
24 documentation issue was resolved. It was part of the  
25 compromise. There'll be a verified response. There'll be a

1 deposition under oath. Clearly, RealPage will not be in a  
2 position to back away from the verified response and under-  
3 oath deposition for purposes of the class certification  
4 briefing. There will, of course, be other arguments, but the  
5 execution of this query and the accuracy of the data provided  
6 will not be one of them.

7 I would say, as an additional step, if the Plaintiff's  
8 counsel are somehow interested in looking at the actual search  
9 query that has been executed against the dataset for an  
10 additional level of corroboration on their end in terms of the  
11 query that was run, I also would be happy to provide the  
12 technical SQL queries that were run against the database that  
13 they can review.

14 So, you know, there's nothing here but transparency on  
15 RealPage's end. We don't need to get into the merits of  
16 whether our client has been suspicious. It has not. It's  
17 been fully transparent, and which we remain committed to being  
18 fully transparent, but this -- there's no basis to modify the  
19 prior court order and the compromise that was brokered across  
20 the three interrogatories.

21 So that's our position. And I think we've been eminently  
22 reasonable and transparent in terms of what we offered, what  
23 we are willing to offer, and that should put the issue to  
24 rest. And in fact, we never should have been here in the  
25 first place.

1           And Your Honor, I'm done speaking.

2           THE COURT: Thank you. Mr. Soumilas, you have the  
3 last word, since it is your motion.

4           MR. SOUMILAS: Your Honor, the last thing I wish to  
5 say is that this Court has already ordered this Defendant to  
6 properly answer Interrogatory 15. I think at the time of that  
7 order in January of this year there was no confusion about  
8 what we are seeking. I think the papers submitted by the  
9 parties after meeting and conferring about the motion,  
10 including in person, Your Honor, and that is at Docket 110,  
11 Page 5 of our brief, for example, explains some of our -- I'm  
12 sorry -- Docket 110, Page 5 of our brief quotes some of those  
13 discussions and the joint report that the parties prepared  
14 leading up to the January 15th conference. We think that  
15 there was no question what we were looking for. There's no  
16 possibility that we were looking for actual character-for-  
17 character matches. And this Defendant did not answer this  
18 question.

19           And now Mr. St. George says, but they could and they will,  
20 but we're back a second time doing it. And for that reason, I  
21 think there needs to be some more teeth to this order. We  
22 have to have assurance that this answer now is finally  
23 correct. And surely I would accept Mr. St. George's offer to  
24 look at the computer program or search query, I would want to  
25 see that, and would encourage the Court to direct them to

1 provide that as well as a deposition and a verified answer.

2 And, you know, our view is that the documents should also  
3 be produced, but if the Court is not willing to do that, then  
4 I would encourage the Court to at least allow us the  
5 possibility of a small sampling of the documents, a random  
6 sampling, so that we can be sure that this answer to the class  
7 size is finally correct.

8 And thank you very much, Your Honor. I'm done speaking.

9 THE COURT: If you'll give me just a moment to go back  
10 to the parties' joint submission.

11 (Pause.)

12 THE COURT: All right. I've had the opportunity to  
13 read the Plaintiff's position on Interrogatory No. 15 in the  
14 joint submission.

15 All right. Well, here is the reasoning for my ruling.  
16 It was certainly not clear to me at the hearing in January  
17 that there was a dispute as to what the -- what Interrogatory  
18 15 actually sought, only a dispute as to whether a response to  
19 this interrogatory should be compelled. While I certainly had  
20 to read the interrogatory several times to make sure that I  
21 understood what I thought was being asked, and I -- my initial  
22 reading was in line with what the Plaintiff's reading is, I  
23 cannot say, after considering the Defense's argument regarding  
24 its reading and what the meaning of the word "any" is, or the  
25 reading of it as a disjunctive, that it is, in fact, as clear

1 as what the Plaintiff says. I think this is a genuine dispute  
2 about what this really means.

3 I am not sure why this dispute wasn't resolved at the  
4 face-to-face conference. That's exactly what is supposed to  
5 happen at that type of conference. But it may be that the  
6 parties did not understand that that was an issue.

7 I understand that the parties disagree vehemently as to  
8 whether there was confusion. But there is nothing in the  
9 record before me, after reviewing the appendices submitted by  
10 the parties, and going back independently to the joint  
11 submission, that tells me that this specific issue was, in  
12 fact, discussed and there was an agreement or clarification.  
13 There's nothing in the record. So what I have before me is a  
14 genuine dispute as to what this interrogatory means.

15 While I certainly understand the frustration at not having  
16 a response after seven months, I note that it's only two  
17 months after my ruling, and that there was an offer certainly  
18 to provide a new answer in line with the clarification that  
19 the parties agreed with what was intended to be asked, and  
20 again, not deciding whether it was in fact asked, and this  
21 information could have been provided earlier.

22 Nevertheless, the interrogatory could be read to request  
23 the information that Plaintiff is seeking, undisputedly, so I  
24 am granting the motion in part. I'm going to order the  
25 Defendant to provide a verified answer to Interrogatory 15 by

1 Monday, the 23rd. End of business Monday, the 23rd. Well,  
2 actually, just the 23rd. That gives you a little more time.

3 I'm going to order that it provide the queries that it  
4 used to derive the answer that it provides, and that it make  
5 available a witness for a deposition regarding the query, and  
6 that deposition may be taken outside of the discovery deadline  
7 of March 6th for the class certification.

8 Because there was -- because I find that there was a  
9 genuine dispute over what Interrogatory 15 meant, I do not  
10 find that fees should be awarded. I did not think that fees  
11 going back would be appropriate, even if I had fully granted  
12 the motion, and because the information that was sought is  
13 being provided, the Plaintiff is getting the benefit of its  
14 bargain, and so there is no reason to revisit my prior ruling  
15 on Request for Production No. 2. The Plaintiff is getting the  
16 information that it sought in Interrogatory 15.

17 And to the extent that there is any confusion at all,  
18 which I will not be receptive to any argument regarding  
19 confusion or genuine dispute going forward, from what I heard  
20 on the record today, it appears that Defendant's  
21 characterization of what's being requested is appropriately  
22 set forth on Page 13 of its appendix at Document 117. So the  
23 motion for fees and sanctions is denied.

24 With regard to the request for an extension of deadlines,  
25 as I've noted, I'm allowing the deposition to be taken after

1 the deadline, so there's no need for an extension of that  
2 deadline. And to the extent that an extension of the class  
3 certification deadline is required, that's more appropriately  
4 addressed to Judge Boyle in a separate motion, as opposed to a  
5 part of this discovery motion.

6 So that will be the ruling of the Court. I will issue an  
7 order that memorializes my ruling, and that should go out  
8 today.

9 Are there any questions about my order or my ruling? Mr.  
10 Soumilas?

11 MR. SOUMILAS: Your Honor, thank you. The one thing  
12 that I'm not sure I heard, is there any deadline that the  
13 Court has identified for the production of the query and this  
14 witness? I understand that the response should be by March  
15 23rd, but is there a deadline by which to complete the  
16 deposition, seeing the query, so that -- that will inform me  
17 as to whether we need to seek any extension of the remaining  
18 deadlines from Judge Boyle or whether we can still meet the  
19 current deadlines.

20 THE COURT: If I did not make clear, I intended the  
21 queries to also be produced with the response to Interrogatory  
22 15 on the 23rd.

23 MR. SOUMILAS: Thank you.

24 THE COURT: Obviously, you will need time to review  
25 the response and the query before deciding whether you wish to

1 pursue a second deposition. But certainly, to the extent that  
2 you do, I think that it should be completed no later than 30  
3 days from today.

4 MR. SOUMILAS: Very well, Your Honor. Thank you.

5 THE COURT: Mr. St. George?

6 MR. ST. GEORGE: No, Your Honor, I do not have any  
7 further questions for you.

8 THE COURT: All right.

9 MS. ST. GEORGE: Thank you for your time.

10 THE COURT: All right. Thank you both. Stay safe.  
11 Stay well. Be careful. We are adjourned.

12 MR. ST. GEORGE: Thank you, Your Honor.

13 MR. SOUMILAS: Thank you.

14 (Proceedings concluded at 10:59 a.m.)

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CERTIFICATE

20 I certify that the foregoing is a correct transcript from  
21 the electronic sound recording of the proceedings in the  
above-entitled matter.

22 **/s/ Kathy Rehling**

**04/03/2020**

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24 \_\_\_\_\_  
Kathy Rehling, CETD-444  
Certified Electronic Court Transcriber

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Date

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